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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

WILLIAM RAY SIMONSEN, Plaintiff/Appellant, v. ARIZONA DEPARTMENT OF CORRECTIONS; Director DORA SCHRIRO; P.S.A. MICHAEL LINDERMAN; Senior Chaplain ALWIN BECKER; D.W. CARSON McWILLIAMS; Sergeant CHRISTOPHER MARLETTE; and STATE OF ARIZONA, Defendants/Appellees.	2 CA-CV 2008-0123 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200301472

Honorable Gilberto V. Figueroa, Judge
Honorable William J. O'Neil, Judge

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED

William Ray Simonsen
Tucson
In Propria Persona

Terry Goddard, Arizona Attorney General
By Michael E. Gottfried
Phoenix
Attorneys for Defendants/Appellees

B R A M M E R, Judge.

¶1 Appellant William Simonsen appeals from the trial court's order granting a motion to dismiss filed by appellees the State of Arizona and the Arizona Department of Corrections (ADOC). Simonsen also appeals the court's orders granting motions to dismiss and for summary judgment filed by appellees Dora Schriro, Michael Linderman, Alwin Becker, Carson McWilliams, and Christopher Marlette (collectively, ADOC employees).[1] We affirm in part, reverse in part, and remand the case to the trial court for further proceedings.

Factual and Procedural Background

¶2 "When a motion to dismiss for failure to state a claim is granted, review on appeal necessarily assumes the truth of facts alleged in the complaint." *Logan v. Forever Living Prods. Int'l, Inc.*, 203 Ariz. 191, ¶ 2, 52 P.3d 760, 761 (2002). On appeal from a summary judgment, we view the evidence and all reasonable inferences therefrom in the light most favorable to the party against whom summary judgment was granted. *Walk v. Ring*, 202 Ariz. 310, ¶ 3, 44 P.3d 990, 992 (2002).

[1]Simonsen's complaint also named as defendants ADOC employees Allen Miser, Bennie Rollins, Gary Pinkstaff, James Witten, and John Chaves. These defendants, however, were never properly served and Simonsen's claims against them were dismissed. *See* Ariz. R. Civ. P. 4(i) and 5(b). Simonsen does not argue on appeal that the trial court erred in dismissing his claims against those employees.

¶3 Simonsen's statement of the facts contains no citations to the record and, thus, does not comply with Rule 13(a)(4), Ariz. R. Civ. App. P. We have therefore disregarded it, *see Flood Control Dist. v. Conlin*, 148 Ariz. 66, 68, 712 P.2d 979, 981 (App. 1985), and have instead relied on the appellees' statement of facts and our review of the record. In December 2003, Simonsen, an inmate in ADOC's custody, sued the State, ADOC, and the ADOC employees. His later, amended complaint asserted five claims. In the first, Simonsen alleged the defendants had interfered with the exercise of his religion, Buddhism, by denying his requests for various items to use in the practice of his religion, taking his statue of Buddha from his cell, and by "refus[ing] to order Food Service personnel to provide [him] with a vegetarian/medical diet."

¶4 In count two, Simonsen claimed the defendants, in violation of a court order, had "deprived [him] of his stereo [system] for approximately six hundred and seventy days" before returning it. Simonsen asserted in count three that he was owed wages for twenty hours of work he had performed. In his fourth claim, Simonsen alleged the defendants had retaliated against him due to his successful action to have his stereo system returned. Simonsen asserted the defendants had, inter alia, targeted him for searches, taken his Buddha statue, and assigned him to "hard labor" duties "in contravention to [his] health and doctor's orders." Last, in count five, Simonsen asserted A.R.S. § 12-302(e) is unconstitutional, and, therefore, ADOC was not permitted to "seize monies from [his] account" pursuant to an order by Division One of this court, apparently entered after the State appealed the order Simonsen obtained in his action seeking the return of his stereo system.

¶5 Simonsen brought his first four claims pursuant to 42 U.S.C. § 1983. In counts one and four, Simonsen also asserted the defendants' conduct violated the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc through 2000cc-5. Simonsen additionally stated in count one that the defendants had violated his rights under Arizona's Free Exercise of Religion Act (FERA), A.R.S. §§ 41-1493 through 41-1493.02. Simonsen also asserted the defendants' actions violated various provisions of the United States and Arizona constitutions.

¶6 Pursuant to Rule 12(b)(6), Ariz. R. Civ. P., the State and ADOC moved to dismiss Simonsen's claims against them, asserting they were not cognizable parties under § 1983 and were barred because he had failed to comply with Arizona's notice of claim statute, A.R.S. § 12-821.01, and had not alleged he had suffered a serious physical injury as required by A.R.S. § 31-201.01(L). As to count five of Simonsen's complaint, the State and ADOC argued Simonsen had failed "to identify how his constitutional rights were violated and which Defendants, if any, were liable for this alleged violation." The trial court granted the motion, "dismissing any and all claims against the State of Arizona and Department of Corrections," but did not specify the grounds for its decision.

¶7 The ADOC employees then moved to dismiss counts two through five of Simonsen's complaint. The employees argued a prisoner could not assert a § 1983 claim for deprivation of property, as Simonsen did in counts two and three, "where the state provides an adequate post-deprivation remedy." Therefore, the employees reasoned, because Simonsen had admitted in his complaint he had exhausted his administrative remedies, his

§ 1983 claims in counts two and three "do not qualify as valid claims." The employees also reasoned the court should dismiss Simonsen's retaliation claim in count four because he had not alleged the actions taken by the employees "were not reasonably related to a legitimate penological interest," and instead had "merely state[d] what had happened on a particular date." Additionally, the employees contended the court should dismiss any state law claims because Simonsen had failed to file a proper notice of claim and had failed to allege he had suffered a serious physical injury. Finally, the employees argued count five of Simonsen's complaint "no longer exists" because the court had already dismissed it as to the State and ADOC, and, in any event, the claim was "meritless."

¶8 The trial court granted the ADOC employees' motion to dismiss, concluding Simonsen's second and third claims "do not qualify as valid claims" and, in count four, Simonsen "had failed to plead a case for retaliation." The court also determined any of Simonsen's state law claims were barred by his failure to allege he had suffered a serious physical injury, and that count five "must be dismissed because the State and [ADOC] were properly dismissed and because there is no basis for relief."

¶9 The ADOC employees then filed a motion pursuant to Rule 56, Ariz. R. Civ. P., seeking summary judgment on Simonsen's claim in count one that they had interfered with the exercise of his religion. The employees argued Simonsen had failed to demonstrate they had substantially burdened his religious exercise and, therefore, Simonsen could not prove the elements of his claim. Specifically, the employees asserted Simonsen had been informed that he would be placed on a vegetarian diet if he requested it in writing,

and had admitted he did not need the various items he had requested, or the seized Buddha statue, in order to practice Buddhism. The trial court granted the employees' motion, concluding Simonsen had not produced any evidence that the practice of his religion required the items, nor that he required a vegetarian diet. Additionally, the court observed Simonsen did not dispute "that he could have been and could still be placed back on a vegetarian diet" by requesting it in writing. The court denied Simonsen's subsequent motion for new trial, and this appeal followed.

Discussion

Motion for Summary Judgment

¶10 Because it informs our discussion of the other issues raised by Simonsen's appeal, we first address his argument the trial court erred in granting the ADOC employees' motion for summary judgment. A trial court properly grants summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c); *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). "On appeal from a summary judgment, we must determine *de novo* whether there are any genuine issues of material fact and whether the trial court erred in applying the law." *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 8, 965 P.2d 47, 50 (App. 1998). A trial court should only grant a motion for summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008.

¶11 The trial court granted the motion for summary judgment because Simonsen had failed to produce evidence that he required the various items to practice Buddhism and that he was required to follow a vegetarian diet. As we understand his argument, Simonsen contends the trial court erred as a matter of law because his conduct is protected by RLUIPA if substantially motivated by religious beliefs even if it is not required by those beliefs.

¶12 The RLUIPA, in § 2000cc-1(a), provides that "[n]o government shall impose a substantial burden on the religious exercise of a person . . . confined to an institution" unless the government demonstrates the burden furthers "a compelling governmental interest" and "is the least restrictive means" of furthering that interest. Simonsen is correct that "religious exercise" under RLUIPA is not confined to exercise that is "compelled by, or central to, a system of religious belief." § 2000cc-5(7). But Simonsen bears the initial burden of demonstrating that his exercise of religious rights has been substantially burdened. *See Warsoldier v. Woodford*, 418 F.3d 989, 994 (9th Cir. 2005); § 2000cc-2(b) ("[T]he plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion."). A burden is not substantial unless it "'significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a person's individual religious beliefs,'" "'meaningfully curtail[s] a person's ability to express adherence to his or her faith,'" or "'denies a person reasonable opportunities to engage in those activities that are fundamental to a person's religion.'" *Patel v. United States Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008), *quoting Murphy v. Mo. Dep't of Corrections*, 372 F.3d 979, 988 (8th Cir.

2004); *see also Smith v. Allen*, 502 F.3d 1255, 1277 (11th Cir. 2007) (substantial burden is "'significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly'"), *quoting Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004); *Baranowski v. Hart*, 486 F.3d 112, 124 (5th Cir. 2007) ("'[A] government action or regulation creates a substantial burden on a religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs.'"), *quoting Adkins v. Kapsar*, 393 F.3d 559, 570 (5th Cir. 2004).

¶13 Simonsen does not identify any religious activity he was unable to conduct without the items he had requested or his Buddha statue. Indeed, he admitted in a deposition that "[n]othing is required" by his religion other than meditation, that he could practice his faith without the items, and that they would merely be used to facilitate meditation. And, to the extent that Simonsen asserts his religious experience would be diminished by his having to practice Buddhism without these items, "the diminishment of spiritual fulfillment—serious though it may be—is not a 'substantial burden' on the free exercise of religion." *Navajo Nation v. United States Forest Serv.*, 535 F.3d 1058, 1070 (9th Cir. 2008). Thus, there is no evidence from which a reasonable person could conclude that denying Simonsen these items prevented him from engaging in conduct fundamental to his religious beliefs. *Patel*, 515 F.3d at 813; *see also Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008. Accordingly, the trial court did not err in granting the employees' motion for summary judgment on Simonsen's claim the State had violated RLUIPA by denying him access to those items.

¶14 As part of his RLUIPA claim, however, Simonsen also asserted he had been denied a "vegetarian/medical diet." The trial court concluded Simonsen had not established that "being a vegetarian is mandated by his religion." But Simonsen provided the court a document about Buddhism that stated "[m]any Buddhists . . . practice vegetarianism" to comply with a Buddhist precept requiring them to "[a]ffirm life" and to "not kill." Based on this evidence, a reasonable person could conclude that, for a Buddhist who believes eating meat violates this precept, a non-vegetarian diet would directly conflict with that person's religious beliefs. That some Buddhists do not adopt a vegetarian diet does not mean it is not an important religious exercise for other Buddhists.

¶15 In granting the ADOC employees' motion for summary judgment, the trial court also determined Simonsen had not disputed he had been told he could be placed on a vegetarian diet if he requested it in writing. But the court appears to have misinterpreted Simonsen's claim. Simonsen did not assert he had been denied a vegetarian diet. He asserted he had been denied a vegetarian diet that met his medical needs. Simonsen had been diagnosed with "Barrett's Esoph[a]gitis" and, as part of his treatment, had been placed on a "chronic dysphagia" diet plan composed of six small daily meals. Simonsen had been provided a vegetarian chronic dysphagia diet for several years, but, due to a change in the food services provider at the prison, that diet became unavailable. Prison officials then informed Simonsen he had to choose between a vegetarian diet and the medical diet.[2]

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[2]The ADOC employees asserted in their statement of facts that Simonsen's medical diet had been "discontinued." To the extent this statement might be read to assert that Simonsen no longer requires a medical diet, they cite no supporting evidence. We observe,

¶16 A reasonable person could conclude that forcing Simonsen to choose between a diet that meets his medical needs and a diet that would not violate his religious beliefs constitutes a substantial burden on his religious practice. *See Smith*, 502 F.3d at 1277; *Baranowski*, 486 F.3d at 124. Moreover, nothing in the record suggests Simonsen cannot be provided with a diet that meets both needs. Thus, we conclude the trial court erred in granting the ADOC employees' motion for summary judgment on Simonsen's RLUIPA claim based on the refusal to provide a diet meeting both his medical and religious requirements.

Motion to Dismiss: The State and ADOC

¶17 Simonsen asserts the trial court should not have "dismissed the State . . . and [ADOC] as part[ie]s" because both FERA and the RLUIPA permit claims against a state and its agencies.[3] We review a trial court's grant of a motion to dismiss for an abuse of discretion, but review issues of law de novo. *Dressler v. Morrison*, 212 Ariz. 279, ¶ 11, 130 P.3d 978, 980 (2006). "We will 'uphold dismissal only if the plaintiff[] would not be entitled to relief under any facts susceptible of proof in the statement of the claim.'" *Id.*, *quoting*

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however, that attached to Simonsen's "Brief in Opposition to Defendant's Summary Judgment Motion" is a "Restricted Diet Order" prescribing a medical diet for Simonsen. That order expired in April 2004, four months after Simonsen filed this action. But the ADOC employees have not asserted that Simonsen's claim concerning his diet is moot because he no longer requires a medical diet. Accordingly, we do not address this question.

[3]Simonsen does not assert on appeal that his claims against the State and ADOC under § 1983 were proper. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' [that may be sued] under § 1983."); *Mulleneaux v. State*, 190 Ariz. 535, 538, 950 P.2d 1156, 1159 (App. 1997) (citing *Will*).

Mohave Disposal, Inc. v. City of Kingman, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996) (modification in *Dressler*); *see also Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, ¶ 14, 189 P.3d 344, 347 (2008) (in determining if complaint sufficient, "courts are limited to considering the well-pled facts and all reasonable interpretations of those facts").

¶18 ADOC asserts, and we agree, that it is not a proper party to this action because the legislature has not given it authority to sue or be sued. *See* A.R.S. §§ 41-1601 through 1610.04; *see also Facilitec, Inc. v. Hibbs*, 206 Ariz. 486, ¶ 10, 80 P.3d 765, 767 (2003) (administrative agency has only those powers the legislature has given it); *cf. Kimball v. Shoftstall*, 17 Ariz. App. 11, 13, 494 P.2d 1357, 1359 (1972) (State Board of Education not necessary party because "neither the constitution nor the statutes provide that the State Board is an autonomous body with the right to sue and to be sued"). Thus, the trial court did not err in dismissing Simonsen's claims against ADOC.

¶19 Simonsen is correct that a person may sue the State under the FERA. *See* § 41-1493.01(D) ("A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government."); § 41-1493 (defining "[g]overnment" as "this state and any agency . . . of this state"). But Simonsen's FERA claim in count one fails because he did not allege the State's actions caused him serious physical injury. *See* § 31-201.01(L) (incarcerated felon may not sue under state law for injuries suffered during incarceration without alleging "specific facts from which the court may conclude that the plaintiff suffered

serious physical injury"). Simonsen did not assert FERA as a basis for his retaliation claim in count four.

¶20 The State admits, however, and we agree, that a claim against it may properly be brought under RLUIPA. Section 2000cc-2(a) of RLUIPA permits a person to "obtain appropriate relief against a government." Section 2000cc-5 includes in its definition of "government" "a State" as well as "any branch, department, agency, instrumentality, or official" of a state. Although Simonsen alleged RLUIPA as a basis for relief in both counts one and four, his retaliation claim in count four fails as a matter of law.

¶21 Because he is incarcerated for a felony conviction, Simonsen "has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him to the rules of its prison system." *Meachum v. Fano*, 427 U.S. 215, 224 (1976); *see also Doe v. Arpaio*, 214 Ariz. 237, ¶ 16, 150 P.3d 1258, 1262 (App. 2007) ("[I]ncarceration limits many privileges and rights."); A.R.S. § 13-904(A)(4) (convicted felon's civil rights suspended during imprisonment to extent "reasonably necessary for the security of the institution in which the person sentenced is confined or for the reasonable protection of the public"). "[A] successful retaliation claim requires a finding that 'the prison authorities' retaliatory action did not advance legitimate goals of the correctional institution or was not tailored narrowly enough to achieve such goals.'" *Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995), *quoting Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985). "The plaintiff bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains." *Pratt*, 65 F.3d at 806.

¶22 Simonsen's complaint merely listed the actions taken by the ADOC employees, all of which are facially consistent with legitimate correctional goals. For example, he asserts ADOC employees targeted him for searches, seized as contraband a ceramic figurine of Buddha from his cell, subjected him to disciplinary proceedings, and reassigned him to different work duties. Simonsen did not allege any facts that would support the conclusion those actions had no valid correctional goals. Thus, count four of Simonsen's complaint does not state a valid retaliation claim. Although the State did not make this specific argument in its motion to dismiss, we may affirm a trial court's grant of a motion to dismiss for any reason supported by the record. *See Dube v. Likins*, 216 Ariz. 406, n.3, 167 P.3d 93, 104 n.3 (App. 2007).

¶23 But, as the State admits, the trial court erroneously dismissed Simonsen's RLUIPA claim that the State had interfered with Simonsen's exercise of his religion. The State asserts, however, that we may nonetheless affirm the dismissal because the court properly granted the ADOC employees' later motion for summary judgment on that claim and, therefore, it "fails on the merits." We may affirm a trial court's ruling for any reason supported by the record. *See id*. We are somewhat hesitant, however, to apply that approach in these circumstances. The State filed its motion to dismiss pursuant to Rule 12(b)(6), asserting Simonsen had failed to state claims upon which relief could be granted. A Rule 12(b)(6) motion tests the sufficiency of the complaint. *Neary v. Frantz*, 141 Ariz. 171, 178, 685 P.2d 1323, 1330 (App. 1984). Thus, it presents a markedly different question than the one presented by a motion for summary judgment made pursuant to Rule 56. A motion for

summary judgment instead examines whether there is sufficient evidence to create a genuine issue of material fact. *See* Ariz. R. Civ. P. 56(c).

¶24 The State had already been dismissed from the lawsuit when the ADOC employees filed their summary judgment motion. Thus, the trial court could not grant summary judgment in favor of the State, nor would it have been proper for the State to join the employees' motion. *Cf. Crawford v. Crawford*, 20 Ariz. App. 599, 600, 514 P.2d 1050, 1051 (1973) ("The general rule is that once having dismissed an action, the trial court has no jurisdiction to grant affirmative relief to the parties based on their subsequent petitions for affirmative relief."). Additionally, Simonsen would have had no reason or opportunity to develop or identify any evidence relevant to his claim against the State if that evidence was not also relevant to his claim against the employees.

¶25 Ultimately, however, the basis for the trial court's grant of summary judgment in favor of the ADOC employees applies equally to the State. Simonsen's claim against the State is based on the same facts and circumstances as his claim against the ADOC employees. Thus, if there is no valid claim against the employees, there is no valid claim against the State. As we explained in ¶¶ 11-13, the court did not err in granting summary judgment in favor of the ADOC employees on Simonsen's RLUIPA claim that he should have been permitted to have various items to aid his religious practice. The trial court's conclusion summary judgment was proper was based on Simonsen's failure to demonstrate his religious activity had been significantly burdened. This conclusion would be the same were the State a party to the motion for summary judgment; there is no evidence Simonsen

could present that would result in the State's liability that he should not have already presented in opposition to the ADOC employees' motion for summary judgment.

¶26 Thus, in these narrow circumstances, and in the interests of judicial economy, we conclude it is appropriate to affirm the trial court's grant of the State's motion to dismiss Simonsen's claim the State had interfered with the exercise of his religion by denying him access to items used in his religious practice. Although the court erred in granting the State's motion to dismiss that claim, the error was harmless because Simonsen cannot prevail on his claim against the ADOC employees, and therefore cannot prevail on his factually and legally identical claim against the State. *See Creach v. Angulo*, 189 Ariz. 212, 214, 941 P.2d 224, 226 (1997) ("To justify the reversal of a case, there must not only be error, but the error must have been prejudicial to the substantial rights of the party."); *see also* Ariz. Const. art. VI, § 27 ("No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done."); Ariz. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). But, as we explained in ¶¶ 14-16, the court did err in granting summary judgment in favor of the ADOC employees on Simonsen's claim that his religious exercise had been substantially burdened by the employees' failure to provide him with a vegetarian diet consistent with his medical needs. Therefore, as to Simonsen's RLUIPA claim related to his dietary needs, we reverse the trial court's order dismissing his claim against the State.

Motion to Dismiss: The ADOC Employees

¶27 Simonsen next argues the trial court "improperly resolved factual disputes" in granting the ADOC employees' motion to dismiss counts two through five of his complaint. Simonsen is of course correct that a trial court may not resolve factual disputes in deciding a motion to dismiss under Rule 12(b)(6). *See Dressler*, 212 Ariz. 279, ¶ 11, 130 P.3d at 980. But Simonsen does not explain what factual disputes the trial court purportedly resolved in dismissing his claims. Improperly developed arguments are waived on appeal. *See Lohmeier v. Hammer*, 214 Ariz. 57, n.5, 148 P.3d 101, 108 n.5 (App. 2006); *In re $26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000).

¶28 In any event, the trial court properly concluded Simonsen's claims in counts two through five were insufficient as a matter of law. Simonsen claimed in counts two and three, based on § 1983, that the ADOC employees deprived him of his property—his stereo system and wages he had earned—apparently in violation of his due process rights.[4] In count two, Simonsen asserted that ADOC "agents" took his stereo system in violation of a court order, and he "exhausted the AD[O]C grievance procedures" in seeking its return. In count three, Simonsen stated he had worked twenty hours as punishment for a rule infraction that was later overturned as a result of an administrative appeal. Simonsen then requested, through the prison's grievance system, that he be compensated for those hours but that request was denied.

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[4]Simonsen asserted in his complaint that the ADOC employees had violated the First, Eighth, and Fourteenth Amendments by depriving him of his property. No factual assertion in his complaint, however, may fairly be read to allege a violation of his First or Eighth Amendment rights related to his deprivation of property claims.

¶29 But "a mere allegation of property deprivation does not by itself state a constitutional claim." *Hudson v. Palmer*, 468 U.S. 517, 539 (1984). "[I]n challenging a property deprivation, the claimant must . . . prove that the available remedies are inadequate," that is, that they did not comport with due process. *Id.* Simonsen did not assert in his complaint any facts supporting a conclusion that the disciplinary, appeal, or grievance processes violated his due process rights. Thus, his claims in counts two and three are insufficient as a matter of law.

¶30 As to his fourth claim, as we explained above, in order to state a claim for retaliation, Simonsen had to allege the ADOC employees' actions served no valid correctional purpose. He failed to do so and, therefore, his claim was insufficient. Additionally, Simonsen's state law claims fail because he did not allege that he suffered a serious physical injury. Finally, in count five, Simonsen simply does not state a cognizable claim—any objection Simonsen had to an order by Division One of this court entered in a different action should have been raised in that action. Thus, the trial court did not abuse its discretion in granting the ADOC employees' motion to dismiss counts two through five. *See Dressler*, 212 Ariz. 279, ¶ 11, 130 P.3d at 980.

Disposition

¶31 For the reasons stated, we reverse the trial court's orders granting the State's motion to dismiss and the ADOC employees' motion for summary judgment as they relate to Simonsen's RLUIPA claim that he had been denied a diet consistent with both his

religious beliefs and his medical needs. We affirm the court's orders in all other respects and remand the case to the trial court for further proceedings consistent with this decision.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge